



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Psychology/Department of Health Professions
VAC Chapter Number:	18 VAC 125-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Psychology
Action Title:	Fee increase
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including clinical psychologists, applied psychologists, school psychologists and school psychologists-limited, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. The renewal fee for clinical psychologists, applied psychologists, and school psychologists would be increased from \$225 each biennium to \$140 per year and for a school psychologists-limited from \$100 biennially to \$70 annually. There would also be a one-time renewal fee in 2003 to reduce the deficit, so the Board could begin to bring its revenue and expenditures into balance.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory

or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory Boards including the responsibility to promulgate regulations and levy fees.

§ 54.1-2400. *General powers and duties of health regulatory Boards.* --The general powers and duties of health regulatory Boards shall be:

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such Board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such Board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory Board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory Board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate Board may be subject to disciplinary action. The*

special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the Board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the Board or a panel of the Board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. *To convene, at their discretion, a panel consisting of at least five Board members or, if a quorum of the Board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full Board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for an increase in fees is found in § 54.1-113:

§ 54.1-113. Regulatory Boards to adjust fees.

Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed. It is necessary that each Board have

sufficient revenue to cover its expenditures, and it has been in a deficit since 1998. It is projected that by the close of the 2000-2002 biennium, the deficit will have grown to (\$146,872) and that the deficit will continue through the next biennium. Since the fees from licensees have not been sufficient funds to pay operating expenses for the Board, a fee increase is essential.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board. Without adequate funding, the licensing of practitioners and registration of residencies to provide training for those seeking to become psychologists could be delayed. Sufficient funding is essential to continue the investigation of complaints and disciplinary proceedings against practitioners who are accused of substandard care, sexual exploitation or other violations of law and regulation in order to protect the public health and safety.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Section 30 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to application approval, licensing, investigations and disciplinary proceedings. The renewal schedule would be changed from biennial to annual with the fee for clinical psychologists, applied psychologists, and school psychologists increased from \$225 each biennium to \$140 per year and for a school psychologists-limited from \$100 biennially to \$70 annually. There would also be a one-time renewal fee due by June 30, 2003 to reduce the deficit, so the Board could begin to bring its revenue and expenditures into balance. Fees for late renewal and inactive licensure would also be increased proportionately. Application fees and other miscellaneous fees would not be changed.

Other sections are amended to reflect the change from a biennial to an annual renewal, so the renewal schedule will be set on a fixed date of June 30th, rather than a rolling renewal based on the birth month of the licensees. Regulations for continuing education are amended to require at least 14 hours each year (rather than 28 each biennium) with a minimum of 1.5 hours in professional ethics, standards of practice or laws governing the practice of psychology. Regulations for reinstatement are amended to allow late renewal within one renewal cycle, for one year rather than two, after which a licensee must be reinstated.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

While fee increases proposed by the Board of Psychology should have no specific disadvantage to the consuming public, there is some concern that the number of psychologists is dropping. According to persons in the profession, there are several causes for the decrease in supply of especially clinical psychologists –relating primarily to difficulty faced in getting reimbursements from third-party payors and the prevalence of similar professions who provide counseling and therapy. In some states, clinical psychologists have been granted prescribing privileges, which would distinguish them from other non-medical mental health providers, but there has been so move to do so in Virginia thus far. While the increased fee will not enhance the prospects for increasing the number of licensees, the Board does not believe that licensure fees alone will result in a reduction in the number of applicants for licensure or the number of licensed persons available to provide psychological services to the public. It is also not anticipated that the proposed fee increases will have any effect on fees charged to consumers.

There would be disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of residencies. Potentially, the most serious consequence would be a reduction in or reprioritization of disciplinary cases handled by the Department and the Board. There could be delays in adjudicating cases of substandard practice or sexual exploitation, resulting in potential danger to patients in the Commonwealth.

Practitioners licensed by the Board will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, residents, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board. The fees charged to applicants and licensees solely fund the Board and the Department of Health Professions. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Psychology and within other divisions of the Department of Health Professions.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be clinical psychologists, applied psychologists, school psychologists and school psychologists-limited.

Estimate of number of entities to be affected:

Currently, the following are licensed by the Board:

Clinical psychologists	2035
Applied psychologists	54
School psychologists	112
School psychologists-limited	27

Projected costs to the affected entities:

The cost for compliance will depend on the type of license held and the particular fee being paid. For example, if a clinical psychologist pays his renewal before the expiration date, he will pay \$140 or an increase of \$55 over a two-year period; if the renewal fee is late, he will

owe an additional \$50 (the current late fee is \$80). For the projected costs to each of the affected entities, see a description of the changes below.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 125-20-30. Fees required by the board.

Amendments are proposed to establish the fees for licensees as follows:

?? For the clinical, applied and school psychologist license, the renewal fee will change from \$225 biennially to \$140 annually, and for inactive licensure from \$115 biennially to \$70 annually. The late fee changes from \$80 to \$50, and the one-time debt reduction fee in 2003 will be \$50 for active licensees and \$25 for inactive licensees.

?? For the school psychologist-limited license, the renewal fee will change from \$100 biennially to \$70 annually, and for inactive licensure from \$50 biennially to \$35 annually. The late fee changes from \$35 to \$25, and the one-time debt reduction fee in 2003 will be \$25 for active licensees and \$15 for inactive licensees.

18 VAC 125-20-120. Annual renewal of licensure.

Beginning in 2004, the renewal schedule will change from biennium renewal due in the birth month of the licensee to annual renewal due on June 30th.

18 VAC 125-20-121. Continuing education course requirements for renewal of an active license.

Currently, the regulation requires a licensee to have 14 hours of board-approved continuing education courses each year for a total of 28 hours each biennium. The reference to 28 hours each biennium is deleted. The requirement for a minimum of three hours biennially in professional ethics, standards of practice or laws governing the profession is changed to 1.5 hours annually.

18 VAC 125-20-130. Late renewal; reinstatement; reactivation.

The rule that permits late renewal of a license within two years after expiration is amended to allow late renewal within one renewal cycle or one year. After the one year, the licensee must apply for reinstatement and meet the requirements.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In the Code of Virginia, § 54.1-2400 requires the Board to: “levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory Boards”. In order to carry out its statutory mandates to protect the public and to levy sufficient fees to cover the direct expenses of the Board and the departmental expenses allocated to the Board, an increase in fees was necessary. Funding from fees has failed to keep up with expenditures in the past two biennia.

Need for Fee Increases

Fee increases are related to increased need for funds for staff pay and related benefit increases over the past few years and for the general costs of doing business, such as operation of the DHP data system and the health practitioner intervention program. Fee increases for licensees regulated by the Board of Psychology are necessary in order for the Board and the Department to continue performing essential functions of approving residencies, licensing psychologists and protecting the public from continued practice by incompetent or unethical practitioners.

Funding from fees has failed to keep up with expenditures in the past two biennia. In the promulgation of amended regulations to implement a modest fee increase in 1999-00, the Board originally projected that the new fees would result in income of \$649,000 for the '00-'02 biennium. With the amended fees, the Board projected it would continue to have a small deficit (-\$35,284) by the close of this biennium, but that revenues would exceed the projected budget and the deficit could be eliminated by the close of the '02-'04 biennium. That projection was based on an assumption that the amended fee structure could be in place by the beginning of the biennial renewal cycle on January 1, 2000. The NOIRA document stated in 1999 that, “it is essential to have an increased fee in place by January 31, 2000, in order to address the current deficit and to prevent it from escalating to the point that a modest increase can not erase an accumulated deficit and cover current expenditures.” In fact, amended regulations did not become effective until April of 2000, resulting in the loss of 1/3 of the increased revenue for the biennium. Therefore, in June 2000, the balance sheet showed that actual revenue of \$523,180 was below the biennial estimate of \$588,870, resulting in a carry-over deficit of -\$110,958 rather than the -\$75,044 that had been estimated.

When the Board of Psychology proposed a fee increase in 1999-2000, it was projected that there would be 2760 persons licensed by the 2000-02 biennium (not including school psychologists-limited who were not a category of licensure until March, 2001). In fact, the number of licensees has been relatively static with only 2548 persons licensed in all categories as of April 8, 2002. In addition, the number of persons seeking licensure as a school psychologist-limited has fallen very short of estimates. There are approximately 500 persons who hold licensure from the Department of Education with endorsement as school psychologists. Because of Medicaid

reimbursement, it was thought that at least half of that number would apply for licensure from the Board of Psychology. As of April, 2002, there are only 27 persons holding that license.

For FY '01 and FY '02, the projected revenue is \$588,700 and the Board's projected budget is \$643,881, so with a deficit of -\$108,341 carried forward from the previous biennium, it is likely that the deficit will continue to increase. To date, the actual deficit for the '00-'02 biennium stands at -\$122,524.

Renewal Fees for regulants of the Board of Psychology

Occupation	Current fee	FY '98	FY '96
Psychologists – clinical, applied & school	\$225/biennial	\$200/biennial	\$95/annual
School psychologists-limited	\$100/biennial	N/a	N/a

Comparison of renewal fees in other states

Renewal fees for licensed psychologists vary widely across the country. Among those that are higher than the current fee in Virginia are: (all amounts are calculated as a biennial renewal) Alaska (\$700); Washington (\$550); Minnesota (\$500); Oklahoma, Wyoming, South Dakota; Florida, California, Mississippi (\$400); Texas (\$320); Montana, Missouri, Nebraska (\$300); Idaho (\$280); New Hampshire (\$270). Among our neighboring states, the renewal fees are: North Carolina (\$200); Kentucky (\$300); Maryland (\$250); and Tennessee (\$200); Georgia (\$350); West Virginia (\$250); South Carolina (\$240) and D.C. (\$120).

Renewal Schedule

Psychologists licensed by the Board currently renew their licenses biennially in their birth month in even years (a schedule that was adopted when clinical psychologists were regulated by the Board of Medicine). The proposed regulations would change the cycle to annual renewals to occur on June 30th of each year. To offset the accumulated deficit, the Board has adopted a one-time debt reduction fee, which will be due on June 30, 2003 in the year before the annual renewal cycle takes effect. Therefore, it is essential to have the fee proposal in place before May of 2003 in order to prevent a greater deficit from occurring by the time licenses are again renewed in the year 2004.

Options for fee increases

The Board considered three options in addressing the imbalance in revenues and expenditures. The bulk of the income is derived from renewal fees, and the renewal fee is used as the basis for calculating the appropriate amount of other fees including those for applications, late renewal and reinstatement. Option I was to maintain the current fee structure with a biennial renewal fee for fully-licensed psychologists of \$2225, which would result in compounding the deficit to -\$163,116 by the end of FY03 and -\$159,581 by the end of FY04. That was not an acceptable option to the Board or the Department.

Option II would change the renewal cycle to an annual renewal and set the fee for fully-licensed psychologists at \$150 and for school psychologist-limited at \$75. With Option II, the resulting **deficit** at the end of FY03 would be approximately -\$163,116; and at the end of FY04, it would be -\$76,746. The Board was not advised to continue deficit spending into FY'05, so a third option was considered.

In Option III, the renewal cycle would also change to an annual renewal but the renewal fee would be less than Option II with fees set at \$140 for fully-licensed psychologists and \$70 for school psychologist-limited. The difference is that Option III has a one-time debt reduction fee scheduled in 2003 of \$50 for fully-licensed psychologists and \$25 for school psychologist-limited. No other renewal fee would be collected in that year with the annual cycle beginning in 2004. Since the Board will carry forward a deficit from the previous three biennia, it is projected with Option III will produce sufficient income to realize a small surplus of \$11,494 by June 30, 2004.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was received until November 21, 2001. During the 30-day comment period, there was no comment from any individual or group.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed regulations were considered in an open meeting with the full Board; there were no questions or comments about the need for clarification. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations are currently under review and will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be an impact on disposable family income, as psychologists will experience an increase in the cost of licensure. While the total cost of maintaining a license will increase, the outlay of money at one time will be less burdensome for individual licensees by changing from a biennial to an annual renewal.